

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ROBERT H. BURCH, Individually and on  
behalf of all others similarly situated,

Plaintiff,

-v-

SLM CORPORATION, ALBERT L. LORD,  
CHARLES ELLIOTT (C.E.) ANDREWS and  
ROBERT S. AUTOR,

Defendants.

Civil Action No. 08-cv-01029

ECF Case

RUSSEL PATRICK, Individually and on  
behalf of all others similarly situated,

Plaintiff,

-v-

SLM CORPORATION, ALBERT L. LORD,  
CHARLES ELLIOTT (C.E.) ANDREWS and  
ROBERT S. AUTOR,

Defendants.

Civil Action No. 08-cv-02463 (WHP)

ECF Case

**DECLARATION OF ARTHUR N. ABBEY  
IN RESPONSE TO THE JUNE 30, 2008 ORDER**

ARTHUR N. ABBEY, pursuant to 28 U.S.C. § 746, declares as follows under pain and penalty of perjury under the laws of the United States:

1. I am the partner of the law firm of Abbey Spanier Rodd & Abrams, LLP counsel for Westchester Capital Management, Inc. ("Westchester Capital") and Green & Smith Investment Management L.L.C. ("G&S") (Collectively, "Westchester Movants" or "Movants"). I submit this declaration, together with the exhibits annexed hereto, in response to the Court's June 30, 2008 Order permitting the Westchester Movants to submit further evidence of their unrestricted decision making authority over the funds they manage that purchased SLM Corporation stock and the authority to maintain this action and in further support of the Westchester Movants' motion to be appointed as the lead plaintiff.

2. Annexed hereto as Exhibit A is a true and correct copy of the underlying consent document from The Merger Fund and The Merger Fund VL affirming Westchester Capital's authority seek to be appointed as the lead plaintiff in the above captioned actions.

3. Annexed hereto as Exhibit B is a true and correct copy of the underlying consent document from The Merger Fund and The Merger Fund VL affirming Westchester Capital's full discretion, control and unrestricted decision making authority over all investments made by these funds.

4. Annexed hereto as Exhibit C is a true and correct copy of the underlying consent document from MSS Merger Arbitrage 2 affirming G&S's authority to seek to be appointed as the lead plaintiff in the above captioned actions.

5. Annexed hereto as Exhibit D is a true and correct copy of the underlying consent document from MSS Merger Arbitrage 2 affirming G&S's full discretion, control and unrestricted

decision making authority over all investments made by this fund.

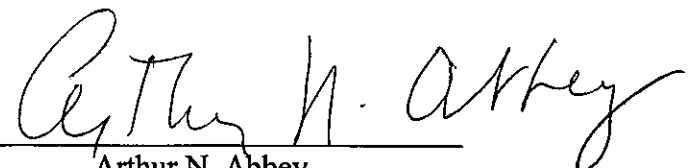
6. Annexed hereto as Exhibit E is a true and correct copy of the underlying consent document from GS Master Trust affirming G&S's authority to seek to be appointed as the lead plaintiff in the above captioned actions.

7. Annexed hereto as Exhibit F is a true and correct copy of the underlying consent document from GS Master Trust (the "Trust") affirming G&S's full discretion, control and unrestricted decision making authority over all investments made by the Trust.

8. Annexed hereto as Exhibit G is a true and correct copy of the underlying consent document from Institutional Benchmarks Series (Master Feeder) Limited affirming G&S's authority to seek to be appointed as the lead plaintiff in the above captioned actions.

9. Annexed hereto as Exhibit H is a true and correct copy of the underlying consent document from the Institutional Benchmarks Series (Master Feeder) Limited affirming G&S's full discretion, control and unrestricted decision making authority over all investments made by this fund.

Dated: July 8<sup>th</sup>, 2008  
New York, New York

  
\_\_\_\_\_  
Arthur N. Abbey

# EXHIBIT

A

**THE MERGER FUND  
THE MERGER FUND VL**

**CONSENT ACTION  
OF THE  
BOARD OF TRUSTEES**

The undersigned, being all of the members of the Board of Trustees (the "Board") of The Merger Fund, a Massachusetts business trust ("TMF") and The Merger Fund VL, a Delaware statutory trust ("VL") (together, the "Funds"), in accordance with the laws of the Commonwealth of Massachusetts and Article IV, Section 1 of the By-laws of TMF, and the laws of the State of Delaware and Article III, Section 11 of the By-laws of VL, respectively, do hereby give their written consent without a meeting to the adoption of the following resolutions, which shall have the same force and effect as if presented and adopted at a meeting of the Board:

**WHEREAS**, the Board believes it is in the best interests of the Funds and their shareholders from time to time to pursue certain lawsuits, including class-action claims, alleging violations of securities laws with respect to securities in which TMF and/or VL has an interest ("Lawsuits");

**WHEREAS**, the Board believes that Westchester Capital Management, Inc. (the "Adviser") has discretion and authority under each of (i) the Investment Advisory Contract, dated January 31, 1989, by and between TMF and the Adviser and (ii) the Investment Advisory Agreement, dated as of July 1, 2003, by and between VL and the Adviser, respectively (the "Advisory Agreements"), to commence Lawsuits on behalf of the Funds and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Funds;

**WHEREAS**, the Board is aware that the Adviser, on behalf of the Funds, has (i) commenced Lawsuits or (ii) sought to be appointed lead plaintiff for a class of investors, including the Funds, in Lawsuits; and

**WHEREAS**, the Board desires to confirm its longstanding belief that the Adviser has standing and authority under the Advisory Agreements to commence and pursue Lawsuits on behalf of the Funds;

**NOW THEREFORE, IT IS:**

**RESOLVED**, that the Board hereby confirms its delegation of authority to the Adviser to commence and pursue Lawsuits on behalf of the Funds and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Funds, provided that the Adviser obtains the pre-approval of the Board in the event the Adviser proposes that the Funds make a litigation expenditure in an amount that impacts the Funds' net asset value by an amount greater than \$0.01 per share with respect to each Lawsuit;

**FURTHER RESOLVED**, that each officer of the Adviser and/or the Funds is hereby authorized to take any actions he or she deems necessary or appropriate in connection with Lawsuits; and

**FURTHER RESOLVED**, that all previous actions taken by the officers of the Adviser and/or the Funds with respect to the Lawsuits are hereby ratified and confirmed in all respects and each officer of the Adviser and/or the Funds is hereby authorized to take such further actions as he or she deems necessary or appropriate in connection with Lawsuits and to effectuate the purposes of these resolutions.

This Consent may be executed in counterparts with all counterparts together constituting one document.

IN WITNESS WHEREOF, the undersigned have executed this Consent as of the 28<sup>th</sup> day of May, 2008.

  
Frederick W. Green

\_\_\_\_\_  
James P. Logan, III

\_\_\_\_\_  
Michael J. Downey

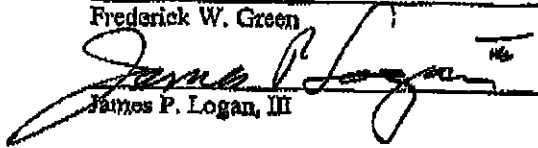
\_\_\_\_\_  
Barry Hamerling

**FURTHER RESOLVED**, that all previous actions taken by the officers of the Adviser and/or the Funds with respect to the Lawsuits are hereby ratified and confirmed in all respects and each officer of the Adviser and/or the Funds is hereby authorized to take such further actions as he or she deems necessary or appropriate in connection with Lawsuits and to effectuate the purposes of these resolutions.

This Consent may be executed in counterparts with all counterparts together constituting one document.

**IN WITNESS WHEREOF**, the undersigned have executed this Consent as of the 28<sup>th</sup> day of May, 2008.

Frederick W. Green

  
James P. Logan, III

Michael J. Downey

Barry Hamerling

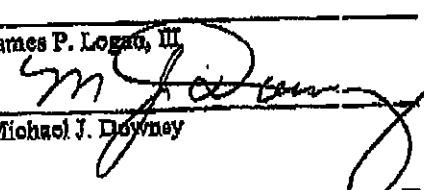
**FURTHER RESOLVED**, that all previous actions taken by the officers of the Adviser and/or the Funds with respect to the Lawsuits are hereby ratified and confirmed in all respects and each officer of the Adviser and/or the Funds is hereby authorized to take such further actions as he or she deems necessary or appropriate in connection with Lawsuits and to effectuate the purposes of these resolutions.

This Consent may be executed in counterparts with all counterparts together constituting one document.

**IN WITNESS WHEREOF**, the undersigned have executed this Consent as of the 28<sup>th</sup> day of May, 2008.

\_\_\_\_\_  
Frederick W. Green

\_\_\_\_\_  
James P. Logan, III

  
\_\_\_\_\_  
Michael J. Downey

\_\_\_\_\_  
Barry Hamerling



**FURTHER RESOLVED**, that all previous actions taken by the officers of the Adviser and/or the Funds with respect to the Lawsuits are hereby ratified and confirmed in all respects and each officer of the Adviser and/or the Funds is hereby authorized to take such further actions as he or she deems necessary or appropriate in connection with Lawsuits and to effectuate the purposes of these resolutions.

This Consent may be executed in counterparts with all counterparts together constituting one document.

**IN WITNESS WHEREOF**, the undersigned have executed this Consent as of the 28<sup>th</sup> day of May, 2008.

\_\_\_\_\_  
Frederick W. Green

\_\_\_\_\_  
James P. Logan, III

\_\_\_\_\_  
Michael J. Downey

\_\_\_\_\_  
Barry Humberling

# EXHIBIT

B



**The Merger Fund  
The Merger Fund VL**

I, the Vice President, Secretary and Treasurer of The Merger Fund ("TMF") and The Merger Fund VL ("VL") (together, the "Funds"), hereby confirm the following on behalf of the Funds:

Westchester Capital Management, Inc. ("Westchester Capital") has been the investment adviser of TMF since January 31, 1989 and the investment adviser of VL since July 1, 2003.

Pursuant to the Investment Advisory Contract, dated as of January 31, 1989, by and between TMF and Westchester Capital, and the Investment Advisory Agreement, dated as of July 1, 2003, by and between VL and Westchester Capital, Westchester Capital has full power and authority to manage and supervise the business of the Funds which powers and authority include the full discretion, control and unrestricted decision making authority over all investments made by the Funds.

Sincerely,

Bonnie L. Smith  
Vice President, Secretary and Treasurer

Dated: July 3, 2008

# EXHIBIT

C



MSS Capital Limited  
1 Cornhill  
London  
EC3V 3ND, UK  
Tel: +44 (0) 203 159 5000  
Fax: +44 (0) 203 159 5014  
www.msscapiat.com

*Authorised and regulated by the  
Financial Services Authority  
Registered in England no 04133857*

**PRIVATE AND CONFIDENTIAL**

20 June 2008

To whom it may concern:

I, the Chief Operating Officer of MSS Capital Limited, sub-investment manager of The FTSEhx Fund SPC, acting solely in respect of MSS Merger Arbitrage 2 (the "Fund"), hereby confirm the following on behalf of the Fund:

Green & Smith Investment Management L.L.C. ("Green & Smith") has discretion and authority under an Investment Management Agreement, dated as of April 13, 2004, by and among The FTSEhx Fund SPC, MSS Fund Management Limited, MSS Capital Limited, the Fund and Green & Smith (the "Investment Management Agreement") to pursue certain lawsuits, including class-action claims, alleging violations of securities laws with respect to securities in which the Fund has an interest ("Lawsuits") and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Fund.

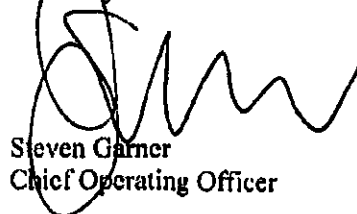
We are aware that Green & Smith, on behalf of the Fund, has (i) commenced Lawsuits or (ii) sought to be appointed lead plaintiff for a class of investors, including the Fund, in Lawsuits.

We desire to confirm our longstanding belief that Green & Smith has standing and authority under the Investment Management Agreement to commence and pursue Lawsuits on behalf of the Fund.

We hereby confirm our delegation of authority to Green & Smith to commence and pursue Lawsuits on behalf of the Fund and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Fund.

We hereby authorize each officer of Green & Smith and/or the Fund to take any actions he or she deems necessary or appropriate in connection with Lawsuits.

Sincerely,



Steven Garner  
Chief Operating Officer

# EXHIBIT

D

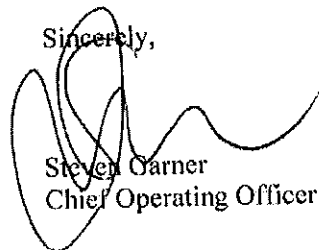
### MSS Merger Arbitrage 2

I, the Chief Operating Officer of MSS Capital Limited, sub-investment manager of The FTSEhx Fund SPC, action solely in respect of MSS Merger Arbitrage 2 (the "**Fund**"), hereby confirm the following on behalf of the Fund:

Green & Smith Investment Management L.L.C. ("Green & Smith") has been the investment manager of the Fund since April 13, 2004.

Pursuant to the Investment Management Agreement, dated as of April 13, 2004, by and among The FTSEhx Fund SPC, MSS Fund Management Limited, MSS Capital Limited, the Fund and Green & Smith, Green & Smith has full power and authority to manage and supervise the business of the Fund which powers and authority include the full discretion, control and unrestricted decision making authority over all investments made by the Fund.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Garner", is written over the printed name and title.

Steven Garner  
Chief Operating Officer

Dated: July 4th, 2008

# EXHIBIT

E



**GS MASTER TRUST**

**CONSENT ACTION  
OF THE  
TRUSTEE**

The undersigned, being the sole trustee (the "**Trustee**") of GS Master Trust, a Bermuda trust (the "**Trust**"), does hereby give its written consent to the adoption of the following resolutions:

**WHEREAS**, the Trustee believes it is in the best interests of the Trust and its beneficiaries to pursue that certain class-action lawsuit captioned *Burch v. SLM Corporation et al.*, Civil Action No. 08-1029, pending in the United States District Court for the Southern District of New York (the "**Lawsuit**");

**WHEREAS**, Green & Smith Investment Management L.L.C. ("**Green & Smith**") has been the investment manager of GS Master Trust since May 31, 2005 pursuant to a Management Agreement, dated as of May 31, 2005, as amended, by and between Green & Smith and the Trustee;

**WHEREAS**, the Trustee is aware that Green & Smith, on behalf of the Trust, has (i) commenced the Lawsuit or (ii) sought to be appointed lead plaintiff for a class of investors, including the Trust, in the Lawsuit; and

**WHEREAS**, pursuant to the powers of delegation granted to the Trustee in the Declaration of Trust dated May 31, 2005 establishing the Trust (the "**Trust Agreement**"), the Trustee has delegated full power and authority to manage and supervise the business of the Trust to Green & Smith which powers and authority include authority for Green & Smith to commence the Lawsuit on behalf of the Trust and/or participate as lead plaintiff or otherwise in the Lawsuit;

**WHEREAS**, the Trustee desires to confirm that Green & Smith has had since the inception of the Trust and currently has standing and authority to commence and pursue the Lawsuit on behalf of the Trustee in respect of the Trust;

**NOW THEREFORE, IT IS:**

**RESOLVED**, that the Trustee hereby confirms the authority to Green & Smith to commence and pursue the Lawsuit on behalf of the Trustee in respect of the Trust and/or participate as lead plaintiff or otherwise in the Lawsuit;

**FURTHER RESOLVED**, that each officer of Green & Smith is hereby authorized to take any actions he or she deems necessary or appropriate in connection with the Lawsuit; and

**FURTHER RESOLVED**, that all previous actions taken by the officers of Green & Smith with respect to the Lawsuit are hereby ratified and confirmed in all respects and each officer of Green & Smith is hereby authorized to take such further actions as he or she deems necessary or appropriate in connection with the Lawsuit and to effectuate the purposes of these resolutions.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has executed this Consent as of the 11<sup>th</sup> day of June, 2008.

WINCHESTER GLOBAL TRUST COMPANY  
LIMITED

By: 

Name:

Francis Murphy Brown

Title:

VICE-PRESIDENT

# EXHIBIT

F

## GS MASTER TRUST

The undersigned, being the sole trustee (the "**Trustee**") of GS Master Trust, a Bermuda trust (the "**Trust**"), does hereby confirm that:

Green & Smith Investment Management L.L.C. ("**Green & Smith**") has been the investment manager of the Trust since May 31, 2005 pursuant to a Management Agreement, dated as of May 31, 2005, as amended, by and between Green & Smith and the Trustee.

Pursuant to the powers of delegation granted to the Trustee in the Declaration of Trust dated May 31, 2005 establishing the Trust (the "**Trust Agreement**"), the Trustee has delegated full power and authority to manage and supervise the business of the Trust to Green & Smith which powers and authority include the full discretion, control and unrestricted decision making authority over all investments made by the Trust.

**IN WITNESS WHEREOF**, the undersigned has executed this Consent as of the 2nd day of July, 2008.

WINCHESTER GLOBAL TRUST COMPANY  
LIMITED

By: 

Name:

PRISCILLA MURPHY BROWN

Title:

VICE-PRESIDENT

# EXHIBIT

G



To whom it may concern:

I, the Chief Operating Officer of Crédit Agricole Structured Asset Management Advisers LLC, investment manager to Institutional Benchmarks Series (Master Feeder) Limited, acting solely in respect of the Cursa Series (the "Fund"), hereby confirm the following on behalf of the Fund:

Green & Smith Investment Management L.L.C. ("Green & Smith") has discretion and authority under an Investment Management Agreement, dated as of May 30, 2006, by and among Crédit Agricole Structured Asset Management Advisers LLC (successor to Starview Capital Management LLC), the Fund and Green & Smith (the "Investment Management Agreement") to pursue certain lawsuits, including class-action claims, alleging violations of securities laws with respect to securities in which the Fund has an interest ("Lawsuits") and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Fund.

We are aware that Green & Smith, on behalf of the Fund, has (i) commenced Lawsuits or (ii) sought to be appointed lead plaintiff for a class of investors, including the Fund, in Lawsuits.

We desire to confirm our longstanding belief that Green & Smith has standing and authority under the Investment Management Agreement to commence and pursue Lawsuits on behalf of the Fund.

We hereby confirm our delegation of authority to Green & Smith to commence and pursue Lawsuits on behalf of the Fund and/or participate as lead plaintiff or otherwise in Lawsuits for the benefit of the Fund

We hereby authorize each officer of Green & Smith and/or the Fund to take any actions he or she deems necessary or appropriate in connection with Lawsuits.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Didier Cenis', written over a horizontal line.

Didier Cenis  
Chief Operating Officer

# EXHIBIT

H





**Institutional Benchmarks Series (Master Feeder) Limited**

I, the Chief Operating Officer of Crédit Agricole Structured Asset Management Advisers LLC, investment manager to Institutional Benchmarks Series (Master Feeder) Limited, acting solely in respect of the Cursa Series (the "**Fund**"), hereby confirm the following on behalf of the Fund:

Green & Smith Investment Management L.L.C. ("**Green & Smith**") has been the investment manager of the Fund since May 30, 2006.

Pursuant to the Investment Management Agreement, dated as of May 30, 2006, by and among Green & Smith, Crédit Agricole Structured Asset Management Advisers LLC (successor to Starview Capital Management LLC), and the Fund, Green & Smith has full power and authority to manage and supervise the trading activities of the Fund which powers and authority include the full discretion, control and unrestricted decision making authority over all investments made by the Fund.

Sincerely,

A handwritten signature in black ink, appearing to read 'Didier Cents', written over a horizontal line.

Didier Cents  
Chief Operating Officer

Dated: July 8, 2008